

13:12:40

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ORBIS OPPORTUNITY FUND, LP,)
et al.,)
)
Plaintiffs,)
) C.A. No. 20-0040 (RGA)
v.)
)
DAVID ALAN BOYER, et al.,)
)
Defendants.)

Tuesday, December 6, 2022
5:13:00 p.m.
Teleconference

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE RICHARD G. ANDREWS
United States District Court Judge

APPEARANCES:

SEITZ, VAN OGTROP & GREEN, P.A.
BY: JAMES S. GREEN, ESQ.

-and-

ECOFF CAMPAIN TILLES & KAY, LLP
BY: LAWRENCE C. ECOFF, ESQ.

Counsel for the Plaintiffs

1 APPEARANCES CONTINUED:

2 KELIN LLC

3 BY: JULIA BETTINA KELIN, ESQ.

4 Counsel for the Defendants

5
6 - - - - -
7

17:13:22 8
17:13:33 9 THE COURT: Hi. This is Judge Andrews. Can
17:13:36 10 anybody hear me?

17:13:39 11 MR. GREEN: Yes, Judge Andrews. This is Jim
17:13:42 12 Green. We can hear you fine.

17:13:43 13 THE COURT: And do I understand that Mr. Boyer
17:13:46 14 maybe and Ms. Klein are also on the line?

17:13:51 15 MR. GREEN: Yes, Your Honor. This is Jim Green
17:13:54 16 and my co-counsel, Larry Ecoff is on as well.

17:14:01 17 THE COURT: So, hi, Mr. Ecoff. The way this is
17:14:04 18 set up, is this like Mr. Green's phone is connected to
17:14:15 19 Ms. Klein and/or Mr. Boyer and so I'm only directly
17:14:21 20 connected to him.

17:14:24 21 MR. GREEN: Yes, Your Honor. I scheduled a
17:14:27 22 conference call and then from that I conferenced in the
17:14:30 23 Court.

17:14:33 24 THE COURT: I was only wondering, I can hear you
17:14:36 25 fine, and I guess I can hear Mr. Ecoff. Ms. Klein, you're

17:14:37 1 out there.

17:14:40 2 MS. KLEIN: I am. Can you hear me?

17:14:42 3 THE COURT: Yes, I can. But it's not coming
17:14:45 4 through as clear. And is Mr. Boyer out there, too?

17:14:51 5 MR. BOYER: Yes, I'm here.

17:14:52 6 THE COURT: All right. So I gather based on
17:14:55 7 this letter that was received by my staff earlier today that
17:15:01 8 Ms. Klein, you're more or less prepared to represent
17:15:08 9 Mr. Boyer in this Case No. 20-40 that's filed in the
17:15:14 10 District Court here?

17:15:18 11 MS. KLEIN: Yes, Your Honor. I was contacted on
17:15:23 12 Sunday about possible representation and then I took a quick
17:15:31 13 look at the case and I am happy to represent Mr. Boyer, but
17:15:39 14 I understand typical procedure would be for me to be
17:15:44 15 retained by Mr. Boyer and then file a motion to postpone the
17:15:52 16 upcoming trial. But I did not want to enter my appearance
17:16:00 17 because I did not want to be stuck with filing a motion
17:16:05 18 which I understand to be opposed, would be opposed by
17:16:12 19 plaintiff's counsel.

17:16:13 20 I did speak with plaintiff's counsel this
17:16:18 21 morning, so I did not want to be stuck, you know, filing a
17:16:22 22 motion and then having to appear for a trial next week.

17:16:23 23 THE COURT: All right.

17:16:24 24 MS. KLEIN: So I'm happy to -- I apologize.

17:16:32 25 THE COURT: No, no, you paused long enough for

17:16:36 1 me to think you were finished, but you weren't, so I
17:16:39 2 interrupted you. So why don't you finish.

17:16:42 3 MS. KLEIN: So I am prepared to represent
17:16:48 4 Mr. Boyer, but I am not prepared to proceed with trial next
17:16:55 5 week for obvious reasons. I understand that there is a long
17:17:03 6 procedural history, I would have to get up to speed. I do
17:17:07 7 have a preexisting obligation to file a post-trial brief
17:17:16 8 which is due on Friday, and then -- so I don't have the
17:17:23 9 wherewithal to get up to speed in time to represent him in
17:17:30 10 trial next week.

17:17:31 11 THE COURT: All right. So I understand that,
17:17:35 12 Ms. Klein. Let me ask you a question which is if I said
17:17:40 13 okay, yes, we will postpone this for a brief time, are you
17:17:44 14 guaranteeing me that you will be representing Mr. Boyer?

17:17:49 15 MS. KLEIN: Yes.

17:17:59 16 THE COURT: Okay.

17:18:01 17 MS. KLEIN: And the reason I hesitate is, I
17:18:05 18 hesitated is because we still have to figure out the
17:18:10 19 financial, but yes, based on Mr. Boyer's representations to
17:18:17 20 me, I will be representing him going forward and I will get
17:18:23 21 up to speed as fast as I can.

17:18:27 22 THE COURT: All right. So you hesitated for the
17:18:33 23 reason why I thought you might be hesitating which is, you
17:18:37 24 know, I wouldn't want to be in a position of okay, the trial
17:18:42 25 is postponed for a reasonable period and oh, guess what,

17:18:47 1 Mr. Boyer has not satisfied financially, so we're just where
17:18:51 2 we are, but we're two months later. I take it you probably
17:18:55 3 understand my concern?

17:18:59 4 MS. KLEIN: I understand, Your Honor. And I
17:19:01 5 will represent to Your Honor that I will figure out the
17:19:05 6 financials with Mr. Boyer and if Your Honor is inclined to
17:19:11 7 postpone the trial, I will commit to represent him going
17:19:16 8 forward. And I will not file any motions to withdraw as
17:19:20 9 counsel based on nonpayment.

17:19:24 10 THE COURT: Okay. All right. Thank you.

17:19:28 11 So Mr. Green or Mr. Ecoff, I do understand you
17:19:32 12 oppose continuance of the trial that's scheduled for next
17:19:36 13 week and if you want to speak, I'll let you speak, but it
17:19:40 14 does appear to me to be in the interest of justice to give
17:19:44 15 Mr. Boyer the opportunity that he's apparently taken at the
17:19:48 16 last minute to have -- to be represented by counsel, and you
17:20:00 17 know, based on the pretrial order that was filed, it seemed
17:20:04 18 to me that there were a maximum of three witnesses in this
17:20:08 19 case, and so I think we could postpone the trial to, you
17:20:12 20 know, about February or something, and give Ms. Klein and
17:20:16 21 her client an opportunity to actually engage with you on a
17:20:20 22 pretrial order, and then have a trial that would be much
17:20:24 23 better for the justice system to have her representing
17:20:28 24 Mr. Boyer than to have him being pro se.

17:20:32 25 So Mr. Green or Mr. Ecoff, is there anything you

17:20:47 1 want to say?

17:20:50 2 MR. ECOFF: Your Honor, thank you. I understand
17:20:53 3 the Court's thought process. The only thing I'm concerned
17:20:59 4 about is this, Your Honor, I'm assuming A, that discovery is
17:21:02 5 closed, and I say that for the reason that over the
17:21:08 6 depositions of Mr. Boyer, and even Mr. Plasco of recent,
17:21:13 7 there are all these documents that are out there that we
17:21:16 8 requested and never received. We were prepared to proceed
17:21:19 9 to trial, the fact that they haven't produced documents that
17:21:21 10 they have said they have but haven't produced, I don't want
17:21:25 11 to be faced now with a counsel coming in and finding that we
17:21:29 12 have thousands and thousands of pages of documents that have
17:21:34 13 now surfaced.

17:21:35 14 Just to give you an example, I conducted the
17:21:38 15 deposition of Mr. Plasco and asking for documents, during
17:21:43 16 the deposition he literally went on the computer and started
17:21:46 17 reading documents to me of communications with my client,
17:21:49 18 the plaintiffs, and these have been be requested but they
17:21:52 19 were never provided, so that's my one concern, Your Honor,
17:21:55 20 is knowing that discovery is closed, not now being faced
17:21:57 21 with a barrage of new documents, never seen, never produced
17:22:01 22 that just surfaced all of a sudden, which I know that the
17:22:04 23 defendants have, that Mr. Boyer has because he admitted to
17:22:07 24 it in his deposition but just hasn't provided them.

17:22:12 25 THE COURT: Leaving aside the question of why

17:22:15 1 you need to get from Mr. Boyer communications with your
17:22:18 2 clients as opposed to just getting them from your clients,
17:22:22 3 that is probably a question for another day, but yeah, I
17:22:26 4 think, you know, Mr. Boyer pro se has chosen to litigate
17:22:31 5 this case as he has when he had an attorney and when he
17:22:35 6 doesn't have an attorney, so yeah, I'm not thinking that
17:22:38 7 we're starting over from scratch here. But I think that if
17:22:43 8 we -- so what I think ought to happen is Ms. Klein ought to
17:22:48 9 enter her appearance. I will continue the trial. I do
17:22:54 10 think that there is probably a week sometime in February or
17:23:05 11 March area which you can work out with my staff when we
17:23:11 12 could schedule this trial.

17:23:12 13 And, you know, barring a major snowstorm, you'll
17:23:18 14 have your trial, everybody will have their trial, and so --
17:23:23 15 and also work out with my staff a date to submit an actual
17:23:30 16 pretrial order that represents counsel's input for
17:23:41 17 Mr. Boyer. So that's what I would like to do.

17:23:44 18 Ms. Klein, do you think you would be able to
17:23:47 19 enter your appearance by Thursday of this week?

17:23:50 20 MS. KLEIN: Of course, Your Honor. And to your
17:23:57 21 point, I'm not entirely sure what the status of the
17:24:03 22 discovery is. I did briefly confer with opposing counsel
17:24:09 23 this morning. I'm happy to extend discovery deadlines or
17:24:17 24 any deadlines and cure any deficiencies in discovery to the
17:24:23 25 extent that they are warranted.

17:24:33 1 THE COURT: All right.

17:24:35 2 MS. KLEIN: The issue I also had is with my
17:24:41 3 client, with my potential client last night is we did
17:24:45 4 submit, or he did submit a pretrial order which I did not
17:24:52 5 review. I did not feel comfortable reviewing and signing,
17:24:59 6 but I would request leave to amend that pretrial order as
17:25:05 7 necessary once I'm up to speed. I'm happy to --

17:25:10 8 THE COURT: That's what I'm imaging, Ms. Klein,
17:25:15 9 that's what I'm imagining, Ms. Klein, will happen. So first
17:25:20 10 thing is to get your appearance in in this case. When you
17:25:24 11 do that, I'm going to continue the trial. And I would ask
17:25:29 12 that, you know, you and plaintiff's counsel, you know,
17:25:34 13 promptly confer on the fact that you are now in the case and
17:25:40 14 whatever -- and figure out whether there is anything that
17:25:46 15 needs to be done other than schedule a new trial date and a
17:25:51 16 pretrial conference. And, you know, and I plan to do it, to
17:26:01 17 have the trial promptly. Okay?

17:26:04 18 MS. KLEIN: Yes. And I'm very happy to confer
17:26:10 19 with plaintiff's counsel. Thank you, Your Honor. We'll
17:26:16 20 definitely work together.

17:26:20 21 THE COURT: All right.

17:26:23 22 MS. KLEIN: So just so I'm clear, Your Honor is
17:26:29 23 expecting -- Your Honor is going to enter an order on the
17:26:35 24 docket continuing this?

17:26:38 25 THE COURT: Yes.

17:26:39 1 MS. KLEIN: I don't need to file a motion to
17:26:41 2 continue the trial?

17:26:43 3 THE COURT: No, Ms. Klein. I'm treating the
17:26:46 4 letter that was filed pro se as the motion. All I really
17:26:49 5 want to do is get you on the docket as you're in the case
17:26:54 6 representing Mr. Boyer, and then the trial will be continued
17:26:59 7 by my staff with no further input needed from you all.
17:27:04 8 There may be some order about a date to get back in touch
17:27:08 9 with a plan for how to bring this case to a head. But
17:27:15 10 really that's all I need from you right now is for you to
17:27:18 11 enter your appearance.

17:27:21 12 MS. KLEIN: I will do so, Your Honor. I will do
17:27:23 13 so first thing in the morning. Thank you so much.

17:27:26 14 THE COURT: All right. Thank you. Anything
17:27:30 15 further, Mr. Green or Mr. Ecoff?

17:27:35 16 MR. GREEN: Nothing from me, Your Honor. This
17:27:37 17 is Jim Green.

17:27:38 18 MR. ECOFF: Nothing, Your Honor. Lawrence
17:27:40 19 Ecoff.

17:27:41 20 THE COURT: Thank you, counsel, all counsel and
17:27:42 21 Mr. Boyer, for your ability to get on the phone this
17:27:43 22 afternoon. And so we will do what I've said and hopefully
17:27:52 23 move in a direction towards getting the case resolved.

17:27:54 24 All right. So we'll be -- I will be hanging up
17:28:02 25 now. Thank you very much.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Teleconference concluded at 5:28 p.m.)

I hereby certify the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Dale C. Hawkins
Official Court Reporter
U.S. District Court